HON'BLE SMT JUSTICE T.MEENA KUMARI

and

HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

WRIT APPEAL NO : 837 of 2000

Between:

The Director,

Sri Venkateswara Institute of Medical Sciences,

Tirupati.

..... APPELLANT

AND

S. Varada Reddy, s/o. Chinna Reddy,

aged about 45 years, Service in SVIMS,

Tirupati, Chittoor District.

.....RESPONDENT

HON'BLE SMT JUSTICE T.MEENA KUMARI

and

HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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JUDGMENT (per Hon'ble Sri P. Lakshmana Reddy, J):

Challenging the orders passed by the learned Single Judge of this Court in WP No. 13767 of 1997 dated 28.10.1999 with regard to the directions issued to the respondent therein for the restoration of the service of the petitioner as Head Nurse and for payment of relevant pay scales within a period of 15 days by superseding the order passed on 29-12-1998 in the above writ petition, the respondent preferred the present appeal.

The appellant herein is the respondent and the respondent herein is the writ petitioner before single judge. The writ petition was filed seeking a writ of Mandamus declaring the Memo Roc. No. C1/78/SVIMS/96 dated 20-12-1996 issued by the respondent as arbitrary and to direct the respondent to continue the petitioner as Head Nurse in SVIMS with all consequential benefits and further declare that the petitioner is entitled to hold the post of Head Nurse in SVIMS. During the course of hearing of writ petition on 29-12-1998, the writ petitioner submitted that he has no objection to work as dialysis technician w.e.f. 20.2.1993. On such submission, the learned single Judge without going into the merits, passed an order directing that his date of appointment should be taken as 20.2.1993 and the writ petitioner shall be entitled for all benefits like periodical increments etc. from that date on par with others. With such direction learned single Judge, at the first instance, disposed of the writ petition on 29.12.1998. The department fixed his basic pay at Rs. 2315-00 as on 28.2.1993 in the scale of pay of Rs.2315-4880 and found that the writ petitioner was paid excess to a tune of Rs.65,051-10 ps. and ordered recovery. Then the writ petitioner approached the learned single Judge again by way of filing review petition stating that the department misinterpreted the orders of the Court dated 29-12-1998 and fixed his basic pay at Rs.2315 though two Dialysis Technicians viz., Ms. Rosaline and A.S. Sudhakaran who were selected by the same selection committee for the post of Dialysis Technician in the selections held on 20.02.1993 have been granted the basic pay of Rs.3110 in the scale of pay of Rs.2315-4880 (pre-revised scale 1100-2050) with effect from the date of their initial appointment i.e., 20.02.1993 and 31.05.1993 respectively and the petitioner's basic pay also has to be fixed on par with the said two persons at Rs.3110 as the Court directed to fix the pay '**on par with others.**'

The learned single Judge instead of passing orders in review petition passed the impugned orders dated 28.10.1999 in Writ Petition No.13767 of 1997 itself directing restoration of the writ petitioner as Head Nurse and to pay relevant pay scale of Head Nurse within a

period of 15 days from the date of receipt of copy of the order. Aggrieved by the said orders, the respondent-department in the writ petition preferred the present writ appeal.

The Counsel for the appellant contended that the learned Single Judge, in the same writ petition, had already passed a consent order on 29-12-1998, and accordingly the salary of the writ petitioner has been fixed vide proceedings dt. 4-3-1999 and therefore, the learned Single Judge ought not to have passed another order dt.28-10-1999, now under challenge, in the very same writ petition, which was disposed of earlier by him. Therefore, the orders of the learned Single Judge are not sustainable.

Per contra, learned Counsel appearing on behalf of the respondent contended that the learned Single Judge had reviewed and passed the present order in super session of the earlier order passed by him and therefore, it needs no interference.

Learned Counsel for the respondent, however, agreed that if the earlier order dated 29-12-1998 of the Single Judge is implemented in its letter and spirit, i.e., fixing his basic pay at Rs.3110 p.m. ‘ **on par with others’, as** directed in those orders his client has no objection to set aside the impugned order.

The dispute arose obviously on account of misinterpretation of the earlier orders dt. 29.12.1998.

In view of the said submissions made on behalf of both counsel, we are of the considered view that if the earlier orders of the learned single Judge dated 29.12.1998 are clarified, it would suffice. Hence, it is clarified that the pay of the respondent-writ petitioner shall be fixed **‘on par with other’** two Dialysis Technicians viz., Ms. Rosaline and A.S. Sudhakaran who were selected by the same selection committee for the post of Dialysis Technician in the selections held on 20.02.1993 and whose basic pay is fixed at Rs.3110 per month in the scale of pay of Rs.2315-4880 (pre-revised scale 1100-2050) with effect from the date of their initial appointment

and the petitioner's basic pay also has to be fixed 'on par with the said two persons at Rs.3110 as the Court directed to fix the pay **'on par with others.'** The order of the learned single Judge dated 29.12.1998 is accordingly modified with the consent of both counsel.

In view of the said modifications, the proceedings in ROC no. C2/95/SVIMS/97 dated 04.03.1999 are set aside and the appellant is directed to fix the scale of the writ petitioner in accordance with the above said modification. The impugned order dated 28.10.1999 is set aside.

The Writ Appeal is disposed of accordingly. No costs.

T. MEENA KUMARI, J

Dt. 09-8-2005

P. LAKSHMANA REDDY, J

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HON'BLE SMT JUSTICE T.MEENA KUMARI

and

HON'BLE SRI JUSTICE P.LAKSHMANA REDDY

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WRIT APPEAL NO : 837 of 2000

Judgment of the Division Bench delivered by

Hon'ble Sri Justice P. Lakshmana Reddy)

09th August 2005